

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 NORTH CITY PARKWAY, SUITE 1600
LAS VEGAS, NV 89106
(702) 382-2101

Adam P. Segal, Esq.
Nevada Bar No. 6120
Bryce C. Loveland, Esq.
Nevada Bar No. 10132
BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 North City Parkway, Suite 1600
Las Vegas, Nevada 89106
Telephone: 702.382.2101
Facsimile: 702.382.8135
Email: asegal@bhfs.com
bcloveland@bhfs.com

Attorneys for Defendants Wilson-McShane Corporation

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

GLEN LERNER INJURY ATTORNEYS, a
Nevada Corporation,

Plaintiff,

v.

LAKE MEAD EMERGENCY PHYSICIANS,
LLC, a Nevada Limited Liability Company;
CMRE FINANCIAL SERVICES, INC., a
California Corporation; NORTH VISTA
HOSPITAL, INC., a Delaware Corporation;
ORSOSITO, LIMITED LIABILITY COMPANY,
a Nevada Limited Liability Company d/b/a
COMPLETE CARE MEDICAL CENTER;
JAGET, LTD., a Nevada Corporation d/b/a
SPINAL REHABILITATION CENTERS; CHW
NEVADA IMAGING COMPANY, LLC, a
Nevada Limited Liability Company d/b/a
NEVADA IMAGING CENTERS;
HEALTHCARE SYSTEMS, INC., a Washington
Corporation d/b/a HSI; AGATA-VENGER
PARTNERSHIP, LLP, a Nevada Limited
Liability Partnership d/b/a WESTERN
REGIONAL CENTER FOR BRAIN AND SPINE
SURGERY; CLARK COUNTY COLLECTION
SERVICE, LLC, a Nevada Limited Liability
Company; SUNRISE MOUNTAINVIEW
HOSPITAL, INC., a Nevada Corporation; WEST
VALLEY IMAGING LIMITED PARTNERSHIP,

CASE NO. 2:13-cv-00896-APG-GWF

**WILSON-MCSHANE
CORPORATION'S THIRD PARTY
COMPLAINT AGAINST DINA
HAMILTON**

1 a Nevada Limited Partnership; NEVADA
 2 CREDICO, INC., a Nevada Corporation d/b/a
 3 QUANTUM COLLECTIONS; CENTENNIAL
 4 PAIN RELIEF NETWORK, INC., a Nevada
 5 Corporation d/b/a CENTENNIAL SPINE &
 6 PAIN; MOUNTAIN REHABILITATION
 7 SERVICES; MOIHARWIN DIVERSIFIED
 8 CORPORATION, a Nevada Corporation d/b/a
 9 VEGAS VALLEY COLLECTION SERVICE;
 10 LAS VEGAS NEUROSURGERY
 11 ORTHOPAEDICS AND REHABILITATION,
 12 LLP, a Nevada Limited Liability Partnership;
 13 DESERT ORTHOPAEDIC CENTER, LTD., a
 14 Nevada Corporation; ORTHOPAEDIC MOTION,
 15 INC., a Nevada Corporation; CANYON
 16 MEDICAL BILLING, LLC, a Nevada Limited
 17 Liability Company; MED-CARE SOLUTIONS,
 18 LLC, a Nevada Limited Liability Company; NEW
 19 CENTURY REHABILITATION, LLC, Nevada
 20 Limited Liability Company d/b/a MATT SMITH
 21 PHYSICAL THERAPY; SDMI LIMITED
 22 PARTNERSHIP, a Nevada Limited Partnership
 23 d/b/a STEINBERG DIAGNOSTICS; KEY
 24 HEALTH MEDICAL SOLUTIONS, INC., a
 25 California Corporation; RED ROCK
 26 DIAGNOSTICS, a Nevada Limited Liability
 27 Company; BRIAN A. LEMPER, D.O., a Nevada
 28 Corporation; CARE REHAB AND
 ORTHOPAEDIC PRODUCTS, INC., a Virginia
 Corporation d/b/a/ PROGENIX; JOSEPH J.
 SCHIFINI, M.D., LTD., a Nevada Corporation;
 RADAR MEDICAL GROUP, LLP, a Nevada
 Limited Liability Partnership; DIAGNOSTIC
 IMAGING OF SOUTHERN NEVADA LIMITED
 PARTNERSHIP, a Nevada Limited Partnership;
 INSTITUTE OF ORTHOPAEDIC SURGERY,
 LLC, a Nevada Limited Liability Company;
 NEVADA ORTHOPAEDIC & SPINE CENTER,
 LLP, a Nevada Limited Liability Partnership;
 JEFFREY D. GROSS, M.D., INC., a California
 Corporation d/b/a COMPREHENSIVE INJURY
 INSTITUTE; OASIS WELLNESS CENTER,
 LLC, a California Limited Liability Corporation;
 PAIN INSTITUTE OF NEVADA, INC., Nevada
 Corporation; JORGENSEN & KOKA, LLP, a
 Nevada Limited Liability Partnership d/b/a
 PRIMARY CARE CONSULTANTS; CARDIO
 VASCULAR PLUS, INC., a California

Corporation; NATIONWIDE CREDIT
 RECOVERY, a California corporation; TOM
 BROOKS LLC, a Nevada Limited Liability
 Company d/b/a TOM BROOKS PHYSICAL
 THERAPY & SPORTS MEDICINE; PRACTICE
 ADMINISTRATIVE CONSULTANTS, a
 California Corporation d/b/a COAST
 RADIOLOGY AND IMAGING; DIOGENES
 ANESTHESIA MEDICAL GROUP, INC., a
 California Corporation; NATIONAL INTRA-
 OPERATIVE MONITORING; PACIFIC
 HOSPITAL OF LONG BEACH; JOJASO
 MANAGEMENT, INC., a Nevada Corporation;
 PROGRESSIVE MOTION, INC., a Nevada
 Corporation; MEDICAL INVESTMENT, INC., a
 Nevada Corporation d/b/a PURE MEDICAL
 EQUIPMENT; VALLEY VIEW SURGERY
 CENTER, LIMITED PARTNERSHIP, a Nevada
 Limited Partnership d/b/a MEDICAL DISTRICT
 SURGERY; MISSION HEALTHCARE
 SERVICES, INC., a California Corporation; LAS
 VEGAS RADIOLOGY, LLC, a Nevada Limited
 Liability Company; MEDICAL STRATEGY
 MANAGEMENT, INC., a Nevada Corporation;
 LUKE R. WATSON, M.D., INC., a California
 Corporation; WILSON-MCSHANE
 CORPORATION, a Minnesota Corporation; ACS
 RECOVERY SERVICES, INC., an Illinois
 Corporation; HEALTH PLAN OF NEVADA,
 INC., a Nevada Corporation; DOES I-V; and ROE
 CORPORATIONS I-V;

Defendants.

WILSON-MCSHANE CORPORATION, a
 Minnesota Corporation,
 Counterplaintiff,

v.

GLEN LERNER INJURY ATTORNEYS, a
 Nevada Corporation,
 Counterdefendant.

1 WILSON-MCSHANE CORPORATION, a
2 Minnesota Corporation,
3
4 v.
5 DINA HAMILTON, an individual
6 Third Party Defendant.

7 For its Third Party Complaint against Third Party Defendant Dina Hamilton,
8 Defendant/Third Party Plaintiff Wilson-McShane Corporation (“Wilson”) on behalf of the
9 Construction Industry and Laborers Health and Welfare Trust (the “Trust”) alleges as follows:

10 1. This case arises under 29 U.S.C. § 1132(a)(3). The Court has jurisdiction over the
11 Trust’s federal law claims pursuant to 29 U.S.C. § 1132(e) (ERISA) and 28 U.S.C. § 2201
12 (declaratory judgment), and as to the Trust’s state law claims, pursuant to 28 U.S.C. § 1367
13 (supplemental jurisdiction).

14 2. The Trust is an employee welfare benefit plan, as that term is used in 29 U.S.C. §
15 1002(1).

16 3. The Trust is a nonprofit organization described in 26 U.S.C. § 501(c)(9), namely a
17 voluntary employee beneficiary association or “VEBA.”

18 4. The Trust provides health benefits to Trust participants.

19 5. The Trust is not a for-profit insurance company or an insurance company of any
20 kind, but instead is self-funded through the pooled contributions made by employers, and
21 investment returns on those contributions.

22 6. Robert Hamilton was, at all times relevant to this matter, a Trust participant, as
23 that term is used in 29 U.S.C. § 1002(7).

24 7. Dina Hamilton was, at all times relevant to this matter, a beneficiary to the Trust,
25 as Robert Hamilton’s dependent, and as that term is used in 29 U.S.C. § 1002(8).

26 8. Plaintiff, Glen Lerner Injury Attorneys (“Plaintiff”), was the law firm representing
27 Dina Hamilton with respect to the Trust’s claims herein.

28 9. Dina Hamilton was injured as a result of a car accident on January 5, 2007.

1 10. At the time of injury, Dina Hamilton was a beneficiary to the Trust.

2 11. The rules under which a beneficiary, like Dina Hamilton, may receive Trust
3 benefits are set forth in the Trust's Summary Plan Description.

4 12. The Trust's rules include many provisions designed to preserve Trust assets for the
5 payment of benefits to its participants and their family members.

6 13. Because the Trust is a VEBA, and not a for-profit insurance company, the Trust
7 (through its Trustees) must take steps, through the adoption of Trust rules and otherwise, to
8 ensure the Trust expends the limited resources it has as prudently and frugally as possible.

9 14. One such rule adopted by the Trust is that, if the Trust pays for injuries caused to a
10 Trust participant by a liable third party, the Trust must be repaid out of recoveries from that liable
11 third party.

12 15. The Trust's rules in this regard are designed to be fair and equitable to all
13 participants, whose employer contributions are used to pay claims, and to ensure repayment to the
14 Trust out of any recovery from a third party.

15 16. The Trust's rules state that, to the extent a beneficiary, like Dina Hamilton,
16 recovers from a third party after the Trust has already paid benefits, the beneficiary is required to
17 reimburse the Trust for those benefits within ten (10) days of such recovery ("Repayment
18 Rights").

19 17. The Trust's Repayment Rights extend to a beneficiary's attorney, agent, assignee,
20 trust or any other person or entity holding funds on behalf of a participant.

21 18. The Trust's rules provide that when a beneficiary is injured by a third party, from
22 the moment medical services are rendered for which the Trust pays benefits, the Trust has a first
23 priority lien on any recoveries from a liable third party, no matter how labeled or denominated
24 ("Lien Rights").

25 19. The Trust's Lien Rights extend to a beneficiary's attorney, agent, assignee, trust or
26 any other person or entity holding funds on behalf of a beneficiary.

27 20. The Trust's rules provide that, to the extent a beneficiary recovers from a third
28 party after claims have already been paid by the Trust, the beneficiary holds those funds in

1 constructive trust for the Trust and must pay such amounts over to the Trust within ten (10) days
2 of receipt (“Constructive Trust”).

3 21. The Trust’s Constructive Trust rights extend to a beneficiary’s attorney, agent,
4 assignee, trust or any other person or entity holding funds on behalf of a beneficiary.

5 22. The Trust’s rules provide that any recoveries owed by a third party are deemed
6 assigned to the Trust prior to receipt by the beneficiary, or anyone else receiving such funds on
7 her behalf, and such funds, thus assigned, are the sole property of the Trust and subject to
8 immediate turnover to the Trust.

9 23. The Trust’s rules explicitly require first priority and full reimbursement regardless
10 of whether or not the amount recovered is sufficient to make the beneficiary whole and without
11 deduction or offset for attorney’s fees and costs.

12 24. The Trust’s rules provide that all its third-party recovery rules, as set forth above,
13 are cumulative and may be asserted singly, together and in any combination.

14 25. The Trust’s rules provide a strict duty of cooperation with the Trust’s third-party
15 recovery rules. Failure to comply with such rules renders a participant ineligible for any Trust
16 benefits under the terms of the ERISA-regulated employee welfare benefit plan.

17 26. The Trust’s rules regarding third-party recoveries state that, if any legal action is
18 required for the Trust to enforce any of its rights, the participant and beneficiaries shall be liable
19 to the Trust for all its legal costs, fees and expenses, without regard to whether such legal action
20 results in a judgment or order.

21 27. Plaintiff, on behalf of Dina Hamilton, has received recoveries from third parties
22 that exceed all of the claims the Trust has paid for benefits on Dina Hamilton’s behalf for her
23 accident-related injuries.

24 28. Despite demands, Plaintiff, acting on Dina Hamilton’s behalf, has failed and
25 refused to repay to the Trust the amount of medical claims it has paid on behalf of Dina Hamilton
26 related to the injuries caused by a third party.

29. To the contrary, Plaintiff sued the Trust in a state interpleader action, forcing the Trust to pay for attorney's fees and costs to defend that lawsuit and petition for removal to this Court.

30. The funds recovered from the third-party are currently being held by Plaintiff on Dina Hamilton's behalf.

**CLAIM ONE: ENFORCEMENT OF ERISA PLAN LIEN RULES
AND FORECLOSURE OF LIEN
(29 U.S.C. § 1132(a)(3))**

31. Paragraphs 1 through 30 above are incorporated by reference here as though fully set forth.

32. Pursuant to the Trust's Summary Plan Description, an ERISA plan document, a lien exists on third-party recoveries in an amount equal to that paid out by the Trust due to Dina Hamilton's injuries.

33. Dina Hamilton has failed to turn over the third-party recoveries on which the lien exists.

34. Dina Hamilton should be ordered to turn over the property on which the Trust's lien exists, *i.e.*, the third-party recoveries that equal the amount of health benefits paid by the Trust attributable to the third-party's liability to Dina Hamilton for her injuries, plus attorney's fees and costs incurred by the Trust in this lawsuit.

**CLAIM TWO: CONSTRUCTIVE TRUST
(29 U.S.C. § 1132(a)(3))**

35. Paragraphs 1 through 34 above are incorporated by reference here as though fully set forth.

36. Pursuant to the Trust's Summary Plan Description, an ERISA plan document, a constructive trust exists on third-party recoveries in an amount equal to that paid out by the Trust due to Dina Hamilton's injuries.

37. Dina Hamilton has failed to turn over the third-party recoveries, which her attorney holds in trust for the benefit of the Trust.

38. Dina Hamilton should be ordered to turn over the property her attorney holds in constructive trust for the Trust, *i.e.*, the third-party recoveries that equal the amount of health benefits paid by the Trust attributable to the third-party's liability to Dina Hamilton for her injuries plus attorney's fees and costs incurred by the Trust in this lawsuit.

CLAIM THREE: ENFORCEMENT OF ERISA PLAN REPAYMENT RULES

(29 U.S.C. § 1132(a)(3))

39. Paragraphs 1 through 38 above are incorporated by reference here as though fully set forth.

40. Pursuant to the Trust's Summary Plan Description, an ERISA plan document, beneficiaries and their attorney, agent, assignee, trust or any other person or entity holding funds on behalf of a beneficiary must repay to the Trust third-party recoveries in an amount equal to that paid out by the Trust due to their injuries, which amounts are deemed assigned to the Trust under its rules.

41. Dina Hamilton has failed to turn over the third-party recoveries in direct violation of the Trust's third-party repayment rules.

42. Dina Hamilton should be ordered to turn over the amounts required to be repaid pursuant to the Trust's third-party repayment rules, *i.e.*, the third-party recoveries that equal the amount of health benefits paid by the Trust attributable to the third-party's liability to Dina Hamilton for her injuries plus attorney's fees and costs incurred by the Trust in this lawsuit.

CLAIM FOUR: PRELIMINARY INJUNCTION

43. Paragraphs 1 through 42 above are incorporated by reference here as though fully set forth.

44. The Trust will suffer irreparable harm if no injunction is issued as its ability to recover the amounts to which it is entitled will be severely limited.

45. The Trust is likely to succeed on the merits of its claims for repayment and reimbursement.

46. The balance of hardships tips in favor of the Trust because issuance of the injunction would merely delay Dina Hamilton's ability to disburse the funds until the Court has

made its determination; however, failure to issue the injunction, and thereby allowing Dina Hamilton to dissipate or disburse the funds, would severely limit the Trust's ability to recover the amounts to which it is entitled.

47. It is clearly in the public interest to protect employee benefit plans, like the Trust, and see that rules intended to provide funding and security for the promised benefits they provide are upheld.

CLAIM FIVE: DECLARATORY JUDGMENT

(28 U.S.C. § 2201)

48. Paragraphs 1 through 47 above are incorporated by reference here as though fully set forth.

49. Contrary to the Trust's claims above, Dina Hamilton has completely failed to disburse the amounts owed to the Trust.

50. Thus, a dispute has arisen and an actual controversy exists between Dina Hamilton and the Trust with regard to the proper interpretation and application of the Trust's plan.

51. A declaration of rights, responsibilities and obligations of Dina Hamilton and the Trust is essential to determine the respective rights and obligations of the parties hereto.

WHEREFORE, the Trust prays for relief as follows:

1. Attorney's fees and costs to bring this third party complaint;
2. Judgment against Dina Hamilton for an amount determined at trial;
3. Prejudgment interest;
4. Temporary and preliminary injunctive relief preventing the distribution or dissipation of the third-party recoveries received by Dina Hamilton;
5. For a declaratory judgment against Dina Hamilton as set forth above.

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6. For such other relief as the Court deems appropriate.

Dated this 28th day of May, 2013.

BROWNSTEIN HYATT FARBER SCHRECK, LLP

/s/ Bryce C. Loveland

Adam P. Segal, Esq.

Nevada Bar No. 6120

Bryce C. Loveland, Esq.

Nevada Bar No. 10132

100 North City Parkway, Suite 1600

Las Vegas, Nevada 89106

Telephone: 702.382.2101

Facsimile: 702.382.8135

Attorneys for Defendants Wilson-McShane Corporation

BROWNSTEIN HYATT FARBER SCHRECK, LLP
100 NORTH CITY PARKWAY, SUITE 1600
LAS VEGAS, NV 89106
(702) 382-2101

CERTIFICATE OF SERVICE

Pursuant to Federal Rule of Civil Procedure 5(b), I certify that I am an employee of Brownstein Hyatt Farber Schreck, LLP and that on this 28th day of May, 2013, I served a true copy of the foregoing **WILSON-MCSHANE CORPORATION'S THIRD PARTY COMPLAINT AGAINST DINA HAMILTON** upon:

Justin G. Randall, Esq.
GLEN LERNER INJURY ATTORNEYS
4795 South Durango Drive
Las Vegas, NV 89147
jrandall@glenlerner.com

Attorney for Plaintiffs

- ☒ a. **BY CM/ECF System.**
☒ b. **BY PERSONAL SERVICE**

Dina Hamilton
3624 Iverson Lane
North Las Vegas, NV 89032

Third Party Defendant

I declare under penalty of perjury that the foregoing is true and correct.

/s/ Ebony Davis
An Employee of Brownstein Hyatt Farber Schreck, LLP

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